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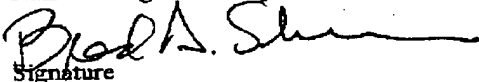
TO: Examiner Suzette J. Gherbi
COMPANY: United States Patent & Trademark OfficeFAX NUMBER: 571-273-8300
PHONE NUMBER:

FROM: Brad A. Schepers, Reg. No. 45,431

DIRECT DIAL: (317) 238-6334
FAX NUMBER: (317) 636-1507

RE: Response to non-final Office Action for U.S. Patent Application No. 10/699,175

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PTO/SB/21 (09-04)

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TRANSMITTAL
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission


12

| | |
|------------------------|-------------------|
| Application Number | 10/899,175 |
| Filing Date | October 31, 2003 |
| First Named Inventor | Blanchi et al. |
| Art Unit | 3738 |
| Examiner Name | Suzette J. Gherbi |
| Attorney Docket Number | MSDI-434/PC316.08 |

ENCLOSURES (Check all that apply)


| | | |
|---|---|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
| <input checked="" type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input checked="" type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation | <input type="checkbox"/> Status Letter |
| <input checked="" type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Terminal Disclaimer | Decision on Petition (courtesy copy) |
| <input type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> Request for Refund | |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> CD, Number of CD(s) _____ | |
| <input type="checkbox"/> Reply to Missing Parts/Incomplete Application | <input type="checkbox"/> Landscape Table on CD | |
| <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | Remarks | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | | |
|--------------|---|----------|--------|
| Firm Name | Krieg DeVault LLP | | |
| Signature |  | | |
| Printed name | Brad A. Schepers | | |
| Date | March 5, 2008 | Reg. No. | 45,431 |

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|-----------------------|---|------|---------------|
| Signature |  | | |
| Typed or printed name | Brad A. Schepers | Date | March 5, 2008 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2006

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 120.00

Complete if Known

| | |
|----------------------|------------------------|
| Application Number | 10/699,175 |
| Filing Date | October 31, 2003 |
| First Named Inventor | John R. Bianchi et al. |
| Examiner Name | Suzette J. Gherbi |
| Art Unit | 3738 |
| Attorney Docket No. | MSDI-434/PC316.08 |

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 12-2424 Deposit Account Name: Krieg DeVault LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

| Application Type | FILING FEES | | SEARCH FEES | | EXAMINATION FEES | | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
| | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | |
| Utility | 300 | 150 | 500 | 250 | 200 | 100 | 0.00 |
| Design | 200 | 100 | 100 | 50 | 130 | 65 | |
| Plant | 200 | 100 | 300 | 150 | 160 | 80 | |
| Reissue | 300 | 150 | 500 | 250 | 600 | 300 | |
| Provisional | 200 | 100 | 0 | 0 | 0 | 0 | |

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

| Fee (\$) | Small Entity Fee (\$) |
|----------|-----------------------|
| 50 | 25 |
| 200 | 100 |
| 360 | 180 |

| Total Claims | Extra Claims | Fee (\$) | Fee Paid (\$) |
|--|--------------|----------|---------------|
| - 20 or HP = | x | = | 0.00 |
| HP = highest number of total claims paid for, if greater than 20. | | | |
| Indep. Claims | Extra Claims | Fee (\$) | Fee Paid (\$) |
| - 3 or HP = | x | = | 0.00 |
| HP = highest number of independent claims paid for, if greater than 3. | | | |

| Multiple Dependent Claims | |
|---------------------------|---------------|
| Fee (\$) | Fee Paid (\$) |
| | |

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

| Total Sheets | Extra Sheets | Number of each additional 50 or fraction thereof | Fee (\$) | Fee Paid (\$) |
|--------------|--------------|--|----------|---------------|
| - 100 = | / 50 = | (round up to a whole number) x | = | |

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

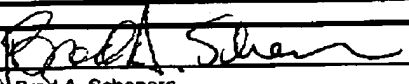
Other (e.g., late filing surcharge): Request for One Month Extension of Time

Fees Paid (\$)

\$120.00

SUBMITTED BY

Signature

Registration No.
(Attorney/Agent) 45,431

Telephone 317-636-4341

Name (Print/Type) Brad A. Schepers

Date March 5, 2008

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ONE INDIANA SQUARE, SUITE 2800
INDIANAPOLIS IN 46204-2709

2/1/08

In re Application of:
Bianchi, John R. et al
Appl. No.: 10/699,175
Filed: Oct. 31, 2003
Attorney's Docket # MSDI-434/PC316.08
For: OPEN INTERVERTEBRAL SPACER

:
: DECISION ON PETITION
:
:
:

This is a decision on the petition filed Dec. 26, 2007 under 37 CFR 1.181 requesting supervisory review of the final office action mailed Nov. 5, 2007. Petitioner requested reconsideration of the finality of the office action.

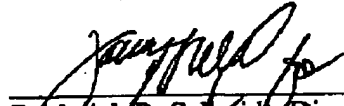
The petition is **Granted**.

Petitioner requests that the finality of the office action mailed Nov. 5, 2007 be withdrawn because the new ground of rejection to the un-amended claims 134, 269 and 292 were not necessitated by the amendment filed on Oct. 18, 2007.

It is noted in the amendment of Oct. 18, 2007, the applicant did not amend claims 134, 269 and 292. The examiner introduced new art to reject the un-amended claims 134, 269 and 292. Therefore, the rejection of at least claims 134, 269 and 292 under 35 U.S.C. 102(e) as anticipated by Pafford et al (6,371,988) was not necessitated by amendment of Oct. 18, 2007. As such, the Nov. 5, 2007 final office action is premature and thus the finality of the action is hereby withdrawn. The period to respond to the Office action of Nov. 5, 2007 remains unchanged. Since the finality is being withdrawn, any amendment responding to the Office action dated Nov. 5, 2007 will be treated as a 37 CFR § 1.111 amendment.

Any questions regarding this decision should be directed to Special Program Examiner, Henry Yuen, at 571-272-4856.

PETITION GRANTED.



Frederick R. Schmidt, Director
Technology Center 3700